

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3405 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

BABUBHAI @ CHELAJI @ BODIYO JIVABHAI @ KARSHANBHAI

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA DATTA FOR MS KRISHNA U MISHRA for Petitioner
MR.HL JANI,APP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/06/98

ORAL JUDGEMENT

The petitioner, who is detained by order dated 26-11-1997 passed by the Commissioner of Police, Ahmedabad under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the Act") has challenged the same by way of this petition under Article 226 of the Constitution of India.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on two criminal cases registered against the

petitioner-detenu, which are pending in the Court. Over and above the said criminal cases, reliance is also placed on the statements of four witnesses for the alleged incidents of 25-10-97 and 10-10-97 wherein the petitioner had tried to extort money from the witnesses and on their refusal to satisfy the demand they were dragged out from their houses and were beaten with the result many people gathered. The petitioner also tried to assault crowd which resulted in the crowd running helter-skelter and a tense atmosphere was created in the locality. Considering these facts, the detaining authority has branded the petitioner as a dangerous person and arrived at the satisfaction that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him and, therefore, the order of detention came to be passed against the detenu.

On behalf of the petitioner, Ms Banna Datta, learned Advocate, submitted that the subjective satisfaction arrived at by the detaining authority that the activities of the petitioner were prejudicial to the maintenance of public order is not genuine inasmuch as the allegations levelled against the petitioner, if accepted as true on their face value, the same can at best be construed as the cases of breach of law and order situations and, therefore, the order of detention passed against the detenu is clearly illegal. In support of her submission, reliance is placed on the decision of Supreme Court in *Mustakmiya Jabbarmiya Shaikh vs M.M.Mehta,, Commissioner of Police, 1995 (2) GLR 1268*. In the said case five criminal cases were filed against the petitioner for offences punishable under Chapters XVI and XVII of the IPC and under Chapter V of the Arms Act. Over and above the same, reliance was placed on the statements of the witnesses of the alleged incidents wherein the detenu had beaten the witnesses. Considering this material, the Supreme Court was of the view that none of the incidents can be said to be incidents affecting public order, nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Section 2 (c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Relying on the said decision, it can safely be concluded that the alleged activities of the detenu can at best be said to be breach of law and order situation but under no circumstances they can be construed as breach of public order as they were stray incidents against individuals where public was not concerned at all. In view of this, I am of the opinion that the

subjective satisfaction derived by the detaining authority in branding the petitioner as a dangerous person is not genuine. Consequently, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 26-11-1997 is quashed and set aside. The petitioner detenu Babubhai @ Chelaji @ Bodiyo Jivabhai @ Karshanbhai Bajaniya is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute to the above extent with no order as to costs.

Verified copy